



This document is scheduled to be published in the Federal Register on 11/20/2013 and available online at <http://federalregister.gov/a/2013-27679>, and on [FDsys.gov](http://FDsys.gov)

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2013-0734, FRL-9903-06-Region 2]

#### Approval and Promulgation of Implementation Plans; New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to the New York Codes. The intended effect of this action is to approve control techniques, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2013-0734, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov)
- Fax: 212-637-3901
- Mail: Mr. Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- Hand Delivery: Mr. Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket No. EPA-R02-OAR-2013-0734. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your

e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the FOR FURTHER INFORMATION CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber ([wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov)), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York,

New York 10007-1866, (212) 637-3381.

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#### **I. What is required by the Clean Air Act (CAA) and how does it apply to New York?**

##### *A. Background*

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse

health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are: the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties.

These designations triggered the CAA's requirements under section 182(b) for moderate nonattainment areas to submit a demonstration of attainment, including implementing reasonably available control technology (RACT).

*B. What are the moderate area requirements?*

Section 182(b)(2)(A) provides that for moderate and above nonattainment areas, states must

revise their SIPs to include RACT for each category of volatile organic compound (VOC) sources covered by a control techniques guidelines (CTG) document issued between November 15, 1990 and the date of attainment.

Additionally, CAA section 184(b)(1)(B) requires implementation of RACT statewide in states that are located within an Ozone Transport Region (OTR). New York is one of the several states located in the OTR required under the CAA to revise its SIP to include RACT requirements statewide for each of the source categories identified in the federal CTGs, including RACT for surface coating processes.

The EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53761 (Sept. 17, 1979). In subsequent Federal Register notices, EPA has addressed how states can meet the RACT requirements of the CAA.

CAA section 183(e) directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (i.e., ozone nonattainment areas). EPA issued the list on March 23, 1995, and has revised the list periodically. See 60 FR 15264 (March 23, 1995); see also 71 FR 28320 (May 16, 2006), 70 FR 69759 (Nov. 17, 2005); 64 FR 13422 (Mar. 18, 1999).

## **II. What was included in New York's submittal?**

On July 15, 2013, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA revisions to the SIP, which included state adopted revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," with an effective date of June 5, 2013. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will help towards achieving attainment of the ozone standards in the NYMA and towards meeting the RACT requirements.

New York also included a negative declaration in its July 15, 2013 submittal. New York has certified, based on a review of operating permits and emissions inventory, no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG or the Industrial Cleaning Solvents CTG apply.

EPA recently approved a SIP revision for prior amendments to Part 228 on March 8, 2012 (77 FR 13974).

## **III. What is EPA's Evaluation of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"**

### *A. Background*

New York State currently regulates VOCs emitted by surface coating processes under 6 NYCRR Subpart 228-1. The revisions to Part 228 update the current rule by incorporating the latest RACT requirements for surface coating processes established in seven different CTGs issued by

EPA from April 1996 to September 2008. These CTGs establish presumptive RACT for surface coating processes in each of the product categories identified below:

- 1) Wood Finishing Manufacturing Operations [EPA 453/R-96-007 (April 1996); 61 Fed. Reg. 25223 (May 20, 1996)];
- 2) Flat Wood Paneling Coatings [EPA 453/R-06-004 (September 2006); 71 Fed. Reg. 58745 (Oct. 5, 2006)];
- 3) Metal Furniture Coatings [EPA 453/R-07-005 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];
- 4) Large Appliance Coatings [EPA 453/R-07-004 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];
- 5) Paper, Film and Foil Coatings [EPA 453/R-07-003 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];
- 6) Automobile and Light-Duty Truck Assembly Coatings [EPA-453/R-08-006 (September 2008); 73 FR 58481 (Oct. 7, 2008)]; and
- 7) Miscellaneous Metal and Plastic Parts Coatings [EPA-453/R-08-003 (September, 2008); 73 FR 58481 (Oct. 7, 2008)].

*B. What are the requirements of Part 228, “Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?”*

Section 228-1.1, “Applicability and Exemptions,” was revised to reflect the applicability criteria specified in seven of EPA’s final CTGs for specific coating processes. Consistent with the



preexisting regulation, all surface coating facilities located in the NYMA, and the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury, are subject to the regulation. Surface coating facilities located outside the above counties and towns have specific applicability criteria for various surface coating processes. These criteria range from a facility using 55 gallons of coating or more per year up to having a potential to emit 50 tons or more of VOCs on an annual basis. Typically, only facilities that have actual emissions of three tons per year or more are subject to the control requirements of the revised regulation. All others are subject only to section 228-1.3, “General Requirements.”

Section 228-1.2, “Definitions,” sets forth several definitions specific to subpart 228-1. This section includes many new definitions that are consistent with the federal CTGs, including several added coating types used in the updated coating processes. The definitions in Part 200 also apply unless they are inconsistent with subpart 228-1.

Section 228-1.3, “General Requirements,” is a new section added to subpart 228-1 which describes the minimum requirements applicable to all surface coating facilities. It combines provisions from the preexisting regulation related to: opacity limit; recordkeeping; prohibition of sale or specification; and handling, storage and disposal of volatile organic compounds. It also sets forth acceptable application techniques common to many surface coating processes.

Section 228-1.4, “Requirements for controlling VOC emissions using compliant materials,” lists the maximum VOC content allowed for coatings used in surface coating processes. The

revisions include additional requirements as well as exceptions specific to a coating process, coating type or application requirements.

Section 228-1.5, “Requirements for controlling VOC emissions using add on controls or coating systems,” provides alternatives to complying with the VOC content limits of section 228-1.4.

Most coating processes are allowed alternative means of compliance. Pursuant to the revisions, they can comply with the regulation by: 1) controlling their emissions using a capturing system followed by treatment of the VOCs; 2) using a combination of VOC content coatings compliant with section 228-1.4 along with non-compliant ones, and with or without added controls, in a “coating system” acceptable to the NYSDEC; or 3) providing a process-specific RACT demonstration, subject to the satisfaction of the NYSDEC, which shows that the requirements cannot be economically or technically achieved. Such process specific RACT demonstrations must be submitted to the EPA for approval as a revision to the SIP.

Section 228-1.6, “Reports, sampling and analysis,” specifies the requirements necessary to determine and maintain compliance with the regulation. This section allows the NYSDEC to have reasonable access to subject facilities to obtain samples of any material containing VOC in order to determine compliance, and specifies the test methods used for add on control systems to show compliance with the applicable requirements.

Revisions to subpart 228-2 make clarifying changes and are non-substantive. Also, the NYSDEC determined that subsection 228-2.7(a)(1), the labeling provision requiring that manufacturers specify the category name, is unnecessary and therefore removed that provision.

*C. What is EPA's evaluation?*

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

Part 228 includes provisions that prohibit the selling, supplying, offering for sale, soliciting, using, specifying or requiring the use of a non-compliant coating on a part or product at a facility in New York, unless allowed by other provisions of Part 228. Part 228 also includes provisions for handling, storage and disposal of VOC's. Facilities also have compliance options including the option of using add-on control equipment provided it achieves 90 percent control.

EPA has evaluated New York's submittal for consistency with the CAA, EPA regulations, and EPA policy and guideline documents. EPA has determined that Part 228 is as effective in regulating the source categories as the following CTG's:

- 1) Wood Furniture Manufacturing Operations [EPA 453/R-96-007 (April 1996); 61 Fed. Reg. 25223 (May 20, 1996)];
- 2) Flat Wood Paneling Coatings [EPA 453/R-06-004 (September 2006); 71 Fed. Reg. 58745 (Oct. 5, 2006)];
- 3) Metal Furniture Coatings [EPA 453/R-07-005 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];

- 4) Large Appliance Coatings [EPA 453/R-07-004 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];
- 5) Paper, Film and Foil Coatings [EPA 453/R-07-003 (September 2007); 72 Fed. Reg. 57215 (Oct. 9, 2007)];
- 6) Automobile and Light-Duty Truck Assembly Coatings [EPA-453/R-08-006 (September 2008); 73 FR 58481 (Oct. 7, 2008)]; and
- 7) Miscellaneous Metal and Plastic Parts Coatings [EPA-453/R-08-003 (September, 2008); 73 FR 58481 (Oct. 7, 2008)].

EPA has determined that the VOC content limits associated with the various surface coating processes included in the revised Part 228 are consistent with the VOC content limits recommended in the applicable surface coating CTG's, as are all of the other recommended control options (i.e., add-on controls efficiency, work practices for coating-related activities and work practices for cleaning materials) and applicability thresholds. Therefore, EPA proposes to approve it as part of the SIP and as meeting the requirement to adopt a RACT rule for the CTG categories listed above.

With regards to New York's negative declaration for Fiberglass Boat Manufacturing Materials and Industrial Cleaning Solvents, EPA agrees with New York's evaluation that no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG apply. However, EPA is still reviewing the negative declaration as it applies to the Industrial Cleaning Solvents CTG and will discuss our evaluation in the future.

As previously noted, EPA recently approved a SIP revision for prior amendments to Part 228 on March 8, 2012 (77 FR 13974).

#### **IV. What is EPA's conclusion?**

EPA has evaluated New York's July 15, 2013 SIP revision submittal for consistency with the CAA, EPA regulations, and EPA policy and guideline documents. EPA proposes that the revisions made to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," with an effective date of June 5, 2013, meet the SIP requirements of the CAA and fulfill the recommended controls identified in the applicable CTGs. EPA is proposing to approve these revisions and is also proposing to approve New York's July 15, 2013 negative declaration, which certifies that based on a review of operating permits and emissions inventory, no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG apply. Therefore, New York will not have to incorporate provisions consistent with that CTG into Part 228 or any other regulation.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) because application of those requirements would be inconsistent with the Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 8, 2013.

Judith A. Enck,  
Regional Administrator,  
Region 2.

[FR Doc. 2013-27679 Filed 11/19/2013 at 8:45 am; Publication Date: 11/20/2013]